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DEPT FOR AF/SPG, A/S FRAZER, SE WILLIAMSON, NSC FOR BPITTMAN AND
CHUDSON
L FOR CHRISTINA SANFORD
DEPT PLS PASS USAID FOR AFR/SUDAN
ADDIS ABABA FOR USAU

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SIPDIS

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SUBJECT: ABYEI: CPA PARTIES AGREE TO THE HAGUE PERMANENT COURT OF
ARBITRATION TO RESOLVE ABYEI'S PERMANENT BORDERS

REF: KHARTOUM 925

¶1. (SBU) As announced widely in the press, the SPLM and the NCP agreed in Juba June 21 that the Permanent Court of Arbitration in the Hague will serve as the arbitration mechanism to resolve the permanent borders of the Abyei region. GNU Second Vice President Taha traveled to Juba June 19 and 20 for the negotiations and met with GOSS President and GNU First Vice President Kiir, although negotiations were primarily between Taha and GOSS Vice President Riek Machar, according to representatives on both sides. A copy of the agreement is included at the bottom of this cable for reference.

¶2. (SBU) SPLM Minister of the Presidency Luka Biong Deng told CG June 22 that according to the agreement, the court will determine whether or not the Abyei Boundaries Commission panel exceeded its mandate. NCP negotiator Dirdeiry Ahmed Mohammed told polchief June 22 that if the court determines that the ABC panel did exceed its mandate, the court itself will determine Abyei's boundaries according to submissions by the parties. Dirdeiry said that NCP and SPLM had consulted the court before making this decision and that the court is willing to play this role. A Dutch lawyer provided by the Dutch embassy assisted the parties during their negotiations in Juba. Post has provided the contact details for the lawyer - Professor Lammers - to L and SPG. Per the Dutch Embassy, Professor Lammers is willing to brief incoming L visitor Christina Sanford on the agreement, next steps in the process, and likely sticking points.

INTERIM ADMINISTRATION

¶3. (SBU) Biong Deng told CG that the parties were close to an agreement on the naming of interim administrators for Abyei and he expected that the issue would be resolved in the coming days. Dirdeiry provided more or less the same read-out, but added some nuance. He said there was a "gentleman's agreement" that neither party would nominate "controversial" candidates; therefore current SPLM representative in Abyei Edward Lino would not be named, nor would Misseriya provocateur Ansari. However, he said the NCP was not yet willing to concede that the Misseriya would not be allowed to have the Administrator nor the Deputy Administrator positions. Dirdeiry said the administration would be named "within a week." Asked if this would affect the date when oil revenues from Abyei would begin to be shared, Dirdeiry pointed out that per the June 8 Abyei agreement, Abyei revenues would be shared effective the date of the agreement. He noted that Higleig oil revenues would also be shared from that date forward, but based on the national formula rather than the Abyei protocol formula.

ELECTORAL LAW

14. (SBU) Biong Deng told CG that the CPA parties were also close to an agreement on the electoral law, which would likely be announced by the end of next week, and that the final agreement would likely parallel what the SPLM had discussed with northern "opposition" political parties in recent weeks. This would result in a 55-45 percent mixed electoral system with candidate constituencies pegged to state-level lists. Dirdeiry provided a slightly different read-out, claiming that in this area there was another "gentleman's agreement" in which the NCP had conceded on the point of state-level candidate lists in exchange for the SPLM conceding on a 60-40 split.

He said the CPA parties now needed time to explain this to other political parties so that they would not be accused of excluding other political parties from the process. Dirdeiry warned that elections should be approached carefully, since "we don't want Sudan becoming a failed state."

JIUs

15. (SBU) Biong Deng told CG that the JIUs were well on their way to being formed, but that there has been no progress on the withdrawal of the SAF 31st brigade. Dirdeiry echoed this and said there will be a CJMC meeting on Abyei June 25 to assess the JIU deployment plan and determine a date for the withdrawal of the SAF that would be "consistent with the terms of the May 8 Abyei agreement."

COMMENT

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16. (SBU) Although the two parties had already identified the court in the Hague as a possible arbitration mechanism, it is nonetheless an additional sign of progress and a positive confidence-building measure that they finalized another agreement on Abyei. Although the parties could have gone further and named an administration, their mutual assurances that candidates would be named in the coming days should keep the momentum going, but such unwritten agreements have a way of unraveling in Sudan (so do written ones). Progress on the elections law is somewhat more dubious, as neither party is particularly eager to move forward with elections planning now. They will need a nudge in that direction and the international community needs to think seriously about what it expects from elections, and how it should interact with the parties to ensure that this CPA milestone can be met without destabilizing both the North and the South.

JOINT NCP - SPLM UNDERSTANDING ON MAIN ISSUES OF THE ABYEI ARBITRATION AGREEMENT

21 June 2008

1. The Parties agree to refer their dispute to final and binding arbitration under the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two Parties of Which only One is a State, subject to such modifications as the Parties may agree in writing.

2. The venue for arbitration shall be in The Hague, The Netherlands.

3. The number of arbitrators shall be five. Each party shall appoint two from the list of the PCA. The four arbitrators shall

appoint a fifth member to chair the tribunal.

¶4. The Parties to the arbitration shall be designated as per the CPA.

¶5. The Parties shall be afforded equal and simultaneous opportunities to fully present their cases covering all issues of form and substance.

¶6. The issues to be determined by the arbitral tribunal are as follows:

(a) To decide whether or not the Abyei Boundaries Commission Experts exceeded their mandate "to define and demarcate the area of the Nine Ngok Dinka Chiefdoms transferred from Bahr Ghazal to Kordofan in 1905, as per the Abyei Protocol, the Appendix, ABC Terms of Reference and Rules of Procedure.

(b) If the arbitral tribunal determines that the ABC did not exceed its mandate, it shall make a declaration to that effect, and order for the full implementation of the ABC Report.

(c) If the arbitral tribunal determines that the ABC Experts exceeded their mandate, it shall make a declaration to that effect, and shall proceed "to define and demarcate on map the boundaries of the Nine Ngok Dinka Chiefdoms transferred from Bahr Ghazal to Kordofan in 1905," based on the submissions of the parties.

¶7. The Parties agree that upon signing of the Arbitration Agreement, the Permanent Court of Arbitration (PCA) shall provide full registry services and administrative support to the Abyei Arbitration Tribunal and the Parties.

¶8. The Tribunal shall apply the CPA, the Abyei Protocol, Abyei Appendix, and applicable principles of law.

FERNANDEZ